Executive Department
Austin, Texas
April 29, 1937

To the Forty-fifth Legislature of the State of Texas:

Article 4, Section 15, of the Constitution of Texas, reads as follows:

"Every order, resolution or vote to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both Houses....."

On April 22 there was filed with this office, for approval or veto, Senate Concurrent Resolution No. 1, prescribing "joint rules of the two Houses." I regret that I am compelled to disapprove and veto this resolution for the following reasons:

Joint rules of the Legislature are prescribed not only for the regular session but for special sessions as well. Certainly these joint rules cannot have a great effect this late in the session since they were presented to me for approval or veto on April 22 at a time when we had only 20 days, including Sundays, of the Regular Session left.

It is a well known fact that rules play the most important part in the passage or defeat of controversial Bills. That Member of the Legislature who is well versed on the rules is promptly recognized as an outstanding and influential Member of the Legislature. Yet rules in both Houses are generally adopted with few dissenting votes; and, I feel I am safe in saying, without a great deal of study other than on the part of Members of the Conference Committee writing the rules. It, therefore, behooves us, I think, to consider carefully proposed joint rules before making them permanent for special as well as the regular session.

In my opinion, the most objectionable of these rules are Nos. 20 and 21. The first of these rules, No. 20, applies to House Bill days in the Senate, and the second, No. 21, applies to Senate Bills in the House.

To illustrate the point, therefore, it will only be necessary to quote Rule No. 20. It reads as follows:

"On calendar Wednesday and Thursday *only* of each week, House Bills on their third and second readings, respectively, shall be taken up and considered in the Senate until disposed of; and in case a House Bill should be pending at adjournment on Thursday, it shall go over to the *succeeding calendar Wednesday* as unfinished business provided, however, this Rule as to such pending business at adjournment on calendar Thursday may be *suspended by two-thirds vote of the Senate* to permit the continued consideration of such pending business."
(Underscoring mine.)

The comparable old joint Rule (No. 22) reads as follows:

"In the Senate, on Wednesday and Thursday of each week, *only House Bills* on their third and second reading, respectively, shall be taken up and considered *until* disposed of, and in case one should be pending at adjournment, it shall go over to the succeeding day (Friday) *as unfinished business;* and this rule cannot be suspended without the consent of the *House.*"

Heretofore, the rule has been that any House Bill pending at adjournment on Thursday should only "go over to the succeeding day (Friday) as unfinished business." *And this procedure could only be suspended with the consent of the House.* NOW, under the *new rule,* a pending Bill would have to go over for six days! *And the rule could be suspended only by two-thirds vote of the entire Senate—not by the House!*

This rule encourages and puts a premium on filibustering. It is undisputed that contested House Bills have already fared badly in the Senate. It is commonly recognized that the Senate calendar of House Bills is hopelessly clogged even though the Houses have operated under the old rule that a bill pending at adjournment on Thursday is still pending business on Friday. To adopt this changed rule will further jam the calendar and make the situation even more hopeless.

The changed rule not only compels a Bill to go over six days but requires a two-thirds vote of the entire Senate (not of the Members present) to suspend the rule. This delivers the fate of a House Bill in the Senate into the hands of a minority. In other words, where heretofore, as a matter of right, a Bill pending at adjournment on Thursday was still pending business Friday morning, it would now require 21 affrmative votes to secure this simple right which has been commonly recognized throughout the legislative history of Texas. Under this new rule an overwhelming majority of 20 Members of the Senate could be in favor of continuing consideration of a Bill. Eleven Senators could be filibustering against it; and the will of the 11 would prevail against the majority of 20!

Again, the changed rule fixes it so that even during a special session where perhaps only one subject might be submitted, House Bills can be considered on Wednesdays and Thursdays *only;* and on no other days except by two-thirds vote of the entire Senate! The old rule, as shown above, provides, "In the Senate on Wednesday and Thursday of each week, only House Bills on their third and second readings respectively

shall be taken up and considered *until disposed of.*" The new rule changes it to read, "On calendar Wednesday and Thursday *only* of each week, House Bills on their third and second readings respectively," thus limiting consideration of House Bills to Wednesday and Thursday, and no other days without the consent of two-thirds of the entire Senate.

I am not discussing these rules solely from the standpoint of repeal of the race track gambling law. On its face this particular rule does show what could happen to the repeal Bill at a special session, but let me point out to you where we would be on other matters—taxation for instance—perhaps the most pressing problem of all.

Suppose I am compelled to call the Legislature back in extraordinary session to provide revenue by taxation. Under the Constitution revenue Bills have to originate in the House. In all probability it would easily take two weeks for committee hearings and passage of a tax Bill from the House to the Senate. The Senate then would send the tax Bill, or Bills, to a committee, from which committee it might possibly emerge in a week's time and get on the House Bill calendar in the Senate by Wednesday and Thursday of the last week—the only days in which House Bills can be considered in the Senate without the affirmative vote of 21 Senators, who would have to actually be present and cast their votes, without pairing, if the Bill was to be further considered after Wednesday and Thursday. None of us can imagine a tax Bill, with the amendments and unlimited argument permitted under Senate rules, possibly passing the Senate in two days. Unless, therefore, two-thirds of the entire Senate membership consented for consideration of these tax Bills on days other than Wednesdays and Thursdays, the tax Bills would be dead at a special session! Dead because a minority of 11 might block the will of 20. It is worse than this! One Member out of 21 might block the will of 20. Suppose a tax Bill is pending in the Senate on the last House Bill day and a quorum of 21 Senators is present. Under Joint Rule No. 20 the pending House Bill would go over to the next Wednesday (which would never be reached during the 30-day session) because the rule requires a "two-thirds vote of the Senate to permit the continued consideration of such pending business. Twenty of the quorum might vote to continue consideration and one vote against it. Others could be absent and the will of one Senator absolutely kill the purpose for which the tax session was called. A sense of fairness should dictate that the will of the majority should prevail, but it would be impossible under this rule.

This power on the part of a minority to thwart final action on a Bill even though it could command a majority for passage has been amply demonstrated again and again during this session. It is evidenced by another rule of the Senate not yet brought out into the open but to which I want to call your attention at this time in order that it may be corrected.

In the past it has been an elementary and commonly recognized rule of procedure that any legislative body can by a majority vote *of a quorum* take any appropriate action where a greater than majority vote is not required by the Constitution. The Constitution requires in certain instances a greater than majority vote; for instance, an affirmative vote of four-fifths of the membership of each House is required to vary the

procedure prescribed by Section 5, of Article 3, as amended in 1930, dealing with the introduction of Bills, committee hearings, etc.; a four-fifths vote to suspend the constitutional rule requiring Bills to be read on three several days; a two-thirds vote of all Members elected to each House required to put a law into immediate effect, etc. Legislative rules may be adopted under the Constitution by a majority vote; but I am firmly convinced that neither House has a right to adopt by such a majority vote rules requiring a greater vote than that required by the Constitution.

The Senate at this session adopted Amended Rule 99-B, which provides, "It shall take the affirmative vote of a *majority of the Members of the Senate* to substitute a minority report for the majority report." This means that in order to bring a Bill out of a Senate committee on minority report 16 members of the Senate must be present and vote affirmatively, without pairing, to bring the Bill out. Oftentimes a majority of the Senate may be represented by a minority on a particular committee.

Isn't this a strange situation? A majority of a quorum can finally pass a Bill if it is up for consideration; but a majority of the entire membership of the Senate is required to bring a Bill out of committee on minority report so that a mere majority can pass it. In other words, 11 of 21 Members can finally pass a bill, but it would take 16 of 21 Members to bring a bill out on minority report to get it where 11 can pass it.

I have carefully briefed the question, and am thoroughly convinced that such a rule is unconstitutional; but whether it will be so adjudged by Presiding Officers in the Senate remains to be seen. I do not believe it is legally or morally right for any legislative body to so tie its hands as to thus make it possible for a minority to block the will of the majority. I am aware of the statement often made that rules are designed to protect minorities, but this is done by such constitutional requirements as committee hearings and the reading of Bills on three several days. Frankly, I think it is high time that we adopt rules and procedure designed to protect the *majority* rather than the minority!

We have heard a great deal of talk lately about the people's national program being blocked by a MAJORITY of one vote. I charge that it is possible under present Senate rules to block the will of the people of Texas by a MINORITY vote. I think I have amply demonstrated this in pointing out the things that can be done under the Senate rule cited and the proposed joint rule which I am today disapproving.

The Presiding Officers of the Senate have already recognized House Bill days in the Senate, and I would much prefer to go forward under ordinary rules than lend my approval to any such rule as proposed Joint Rules Nos. 20 and 21.

I feel sure a majority of both the Senate and the House could not have intended to adopt such an onerous joint rule as the one complained of and must not have known of the possibilities I have tried to point out in this message. In disapproving and vetoing this concurrent resolution, therefore, I feel I am carrying out the will of the majority of the Members of each House. I hope that the Legislature not only in its joint

rules, but in the rules for each House, will make it possible for a majority to act more effectively than is possible under present procedure.

Respectfully submitted

JAMES V. ALLRED
Governor of Texas

Executive Department
Austin, Texas
May 4, 1937.